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6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 RICHARD LEE POLLARD,

11 Defendant.
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NO. CR-95-145-RHW

**ORDER DENYING
DEFENDANT'S MOTION FOR
CLARIFICATION**

13 Before the Court is Defendant's Motion for Clarification (Ct. Rec. 241). On
14 April 15, 1996, Mr. Pollard was sentenced to 240 months imprisonment after a jury
15 found him guilty of being a felon in possession of a firearm, in violation of 18
16 U.S.C. § 922(g), possession of an unregistered firearm, in violation of 26 U.S.C. §§
17 5861(d), 5871, conspiracy to possess methamphetamine with the intent to
18 distribute, in violation of 21 U.S.C. §§ 841(a)(1), 846, and possession of
19 methamphetamine with the intent to distribute, in violation of 21 U.S.C.
20 § 841(a)(1).

21 Since the Court imposed his sentence, Mr. Pollard has submitted several
22 motions to reconsider. Of these motions, four have been construed as motions
23 under 28 U.S.C. § 2255 (Ct. Recs. 158, 204, 222, 229). The last of these motions
24 was filed as a Motion for Writ of Audita Querela (Ct. Rec. 227). In its April 25,
25 2005 Order Denying Motion Seeking Relief Pursuant to 28 U.S.C. § 2255 for Lack
26 of Jurisdiction, the Court re-characterized this motion as a Motion to Vacate, Set
27 Aside, or Correct Sentence under 28 U.S.C. § 2255 because "a federal prisoner
28 may not challenge a conviction or sentence by way of a petition for a writ of audita

1 querela when that challenge is cognizable under § 2255.” *United States v. Valdez-*
2 *Pacheco*, 237 F.3d 1007, 1080 (9th Cir. 2001) (a prisoner may not circumvent the
3 rules regarding successive § 2255 petitions by filing his motion as a common law
4 writ). The Court explained in its order that Defendant’s motion was cognizable
5 under § 2255 because he challenged the legality of his sentence. *See, generally,*
6 *United States v. Wilcox*, 640 F.2d 970 (9th Cir. 1981); (Ct. Rec. 230, at 2).
7 Therefore, its re-characterization as a § 2255 motion was appropriate.

8 The Court also explained that, because this was Defendant’s third or fourth
9 successive petition under § 2255, the Court lacks jurisdiction to review the petition
10 without authorization from the Ninth Circuit Court of Appeals. 28 U.S.C. § 2255;
11 28 U.S.C. § 2244(b)(3)(A); *United States v. Allen*, 157 F.3d 661, 664 (9th Cir.
12 1998). The Court transferred Mr. Pollard’s motion to the Ninth Circuit for
13 determination whether his motion should be authorized pursuant to 28 U.S.C.
14 § 2244(b)(3) (Ct. Rec. 230, at 3). The Court’s order transferring his motion clearly
15 explains the statutory basis for its lack of jurisdiction and its decision to transfer
16 Defendant’s motion (Ct. Rec. 230).

17 Defendant also states that he is “desperately seeking court-appointed
18 counsel, pursuant to the 6th Amendment” (Ct. Rec. 241, at 1). In its June 22,
19 2005 Order Denying Motion for Appointment of Counsel and Motion for
20 Reconsideration (Ct. Rec. 236), the Court found that “the interests of justice do not
21 require appointment of counsel, because the issues raised by Petitioner’s brief are
22 not so novel or complex that they cannot be addressed by a *pro se* litigant, and no
23 evidentiary hearing has been ordered by the Court.” (Ct. Rec. 236, at 2.) The
24 Court’s reasoning has not changed.

25 Not only was Defendant’s motion transferred to the Ninth Circuit, but
26 Defendant also filed a Notice of Appeal of the order. Because this motion has been
27 transferred and appealed to the Ninth Circuit, Defendant should address further
28 inquiries as to its status to that court.

1 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion for
2 Clarification is **DENIED**.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
4 Order and forward copies to counsel.

5 **DATED** this 28th day of October 2005.

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7 s/ ROBERT H. WHALEY
8 Chief United States District Judge
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